



MELINDA HAAG (CABN 132612)  
United States Attorney

MIRANDA KANE (CABN 150630)  
Criminal Chief, Criminal Division

THOMAS M O'CONNELL (NYSBN 1801950)  
Assistant United States Attorney

150 Almaden Boulevard, Suite 900  
San Jose, CA 95113  
Telephone: (408)-535-5053  
Fax: (408)-535-5066  
Email: [thomas.m.oconnell@usdoj.gov](mailto:thomas.m.oconnell@usdoj.gov)

Attorneys for the United States of America

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

DOUGLAS WEINSTEIN,

Defendant.

No. CR 11 - 00185 - LHK

**MOTION FOR APPOINTMENT OF  
ADVISORY COUNSEL**

The government requests that the Court order that advisory counsel be appointed, either from the Federal Public Defender's Office or from the CJA panel, to assist the defendant in the transmittal of discovery from his prior counsel, plea negotiations, and in any other appropriate manner.

On August 29, 2012, after conducting voir dire regarding his ability to represent himself, the court granted defendant's application for Pro Se status and relieved attorney Jonathan McDougall as counsel for defendant. The court continued the case until October 3, 2012, and excluded time under the Speedy Trial Act.

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1 The undersigned government counsel, who recently took over responsibility of this case  
2 from former AUSA Allison Danner, was elsewhere in the District on government business and  
3 not able to be present at the hearing. Subsequent to the hearing, government counsel had the  
4 opportunity to confer, several times, with former defense counsel Jonathan McDougall regarding  
5 various issues, including the handling of discovery.

6 Mr. McDougall advised that he was under the impression that the court's intent was for  
7 government counsel to pick up his file and deliver it to the defendant, who is in custody.  
8 However, this appeared to be problematic on several grounds, including the fact that Mr.  
9 McDougall had made redactions to some, but not all documents, and had provided some, but not  
10 all, of the documents which were provided to him to the defendant.

11 The undersigned government counsel harbors concerns regarding taking possession of  
12 the files and work product of prior defense counsel and possibly injecting error into the record.  
13 Moreover, the prospect of visiting the defendant at the Santa Clara County Jail to engage in plea  
14 negotiations (if this what is contemplated by the court) would appear to create a substantial  
15 likelihood, notwithstanding Fed. R. Crim. Proc. 11, that if those negotiations fail, he would be  
16 chilled, if not precluded by conflict, from litigating the case.

17 Mr. McDougall concurs that the appointment of advisory counsel would expedite  
18 transmittal of the defense file to Mr. Weinstein. This appointment would also create a conduit  
19 through which the Government could conduct plea negotiations with the Pro Se defendant, and  
20 also provide assistance to the defendant in any number of ways.

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1 For the above stated reasons, it is submitted that the appointment of advisory counsel  
2 would both protect the record and expedite the disposition of this case.

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4 Respectfully submitted,

5 DATED: September 26, 2012.  
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9 MELINDA HAAG  
10 United States Attorney

11 /s/  
12 THOMAS O'CONNELL  
13 Assistant United States Attorney

14 DENIED. Mr. Jonathan  
15 Mc Donnell should deliver  
16 the defense file to the Defendant.  
17 The Court never intended for the  
18 government counsel to deliver the  
19 defense file to the Defendant.  
20 Mr. Mc Donnell was retained  
21 counsel; delivering the defense  
22 file is his responsibility.  
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Date 9/27/12

Lucy H. Koh  
U.S. District Judge